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No. 82-207

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

EASTSIDE MENTAL HEALTH CENTER, INC.,
Petitioner,

v.

DAVID R. WILLIAMS,
Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF FOR THE STATE OF ALABAMA AS AMICUS CURIAE IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

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Pursuant to Rule 36 of this Court's Rules, the State of Alabama, by its Attorney General, submits this brief as *amicus curiae* in support of the petition of Eastside Mental Health Center, Inc. for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit entered March 5, 1982.

INTEREST OF THE *AMICUS* STATE OF ALABAMA

In 1974, the Alabama Department of Mental Health, operating through the Jefferson-Blount-St. Clair [Counties] Mental Health-Mental Retardation Authority ("Jefferson Authority"), a regional state agency coordinating mental health services in the greater Birmingham metro-

politan area, opened the Eastside Mental Health Center ("Eastside") as an unincorporated service unit to provide community mental health services within a "catchment area" or segment of the 3-county metropolitan region. *Williams* v. *Eastside Mental Health Center, Inc.*, 669 F.2d 671, 673 (11th Cir. 1982).[1] In 1975, the Jefferson Authority, for administrative reasons and without changing Eastside's purposes or functions, incorporated Eastside under Alabama Code § 10-3-1, a general non-profit corporations statute. *Id.* at 673-74. Aside from its corporate form, Eastside's structure and role within the State's mental health system also remained unchanged. Today, Eastside continues as one of 24 centers located throughout the State comprising Alabama's community mental health system.

In 1979, Respondent Williams, a former transitional home manager[2] at Eastside, sued Eastside for allegedly unpaid minimum wages and overtime pay assertedly required by the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201, *et seq.* (1976). Williams sought primarily additional overtime pay for portions of his shifts spent

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[1] A copy of the opinion below appears in the Appendix ("App.") to Eastside's petition for certiorari ("pet. for cert.") herein, 3a-21a.

[2] The State's transitional home program, operated through Eastside and 11 other community mental health centers, provides up to six months' care for persons who would otherwise enter, and for those who have recently left, state mental health institutions. Home managers like respondent Williams, often college students or recent graduates, provide counselling, guidance and supervision for residents in daily living skills, education, socialization and recreation on rotating shifts, during which the managers live and sleep in the centers. Seven other adult group homes throughout the State provide similar care for periods longer than six months. *See* Alabama Department of Mental Health, *State Mental Health Services Program, FY 1981-82* (Oct. 1, 1981) *("State Program")* at 51-56.

sleeping on Eastside's premises, assertedly due under the federal Wage-Hour Division's complex "sleep-time" regulations. *See* 29 C.F.R. §§ 785.20, *et seq.* (1980). The District Court below held that Eastside is not liable for such overtime payments because it is constitutionally immune from FLSA coverage under the Tenth Amendment, as construed and applied in *National League of Cities* v. *Usery*, 426 U.S. 833 (1976), and granted summary judgment for Eastside. 509 F.Supp. 579, 579-81 (N.D. Ala. 1980).

The Court of Appeals reversed, holding that Eastside is not immunized from FLSA coverage under *National League of Cities* because it is not, in the court's view, a "political subdivision" of the State. 669 F.2d at 678. Further, the court below stated that Eastside—and by direct implication *all* of Alabama's community mental health centers—do not perform "integral governmental functions" protected from FLSA regulation by *National League of Cities* and its progeny, apparently distinguishing "mental health" services from "public health" services protected by *National League of Cities*.[3] *Id.* at 680-81.

The consequences for Alabama of these unanticipated and unprecedented rulings are direct and severe. Foremost is the clear impairment of Alabama's ability to structure, administer and operate essential public health programs as it deems most appropriate and efficient. Moreover, as a result of this infringement of its sovereignty, the State faces a potentially enormous, unbudgeted and

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[3] Suddenly faced with an unanticipated and unprecedented ruling directly jeopardizing its entire community mental health system, Alabama sought, but was denied, intervention as a party, rehearing and rehearing *en banc* below. *See* pet. for cert. at 8, n.6.

unfunded back wage liability to many community mental health center employees. That liability would force the State either to reduce significantly the quality and quantity of certain mental health services—including possible elimination of its transitional home program—or else to decrease other social services in order to maintain present mental health programs. This intrusion upon the sovereignty of the State, and the resultant potentially staggering economic burden, establish the clear interest of the State of Alabama in the outcome of this case.

SUMMARY OF ARGUMENT

National League of Cities held that Congress' Commerce Clause power may not infringe upon State sovereignty embodied in the Tenth Amendment. The decision below that Eastside—effectively created and administered by the State of Alabama as part of its comprehensive community mental health system—is not constitutionally immune from FLSA regulation clearly conflicts with *National League of Cities* in several significant respects.

First, the holding that Eastside is not protected by *National League of Cities*, because it is not a "political subdivision," results in the virtual dictation by federal wage-hour regulation of state mental health policy and employment decisions, thereby undermining the State's constitutionally-protected sovereignty. *Second*, in stating that Alabama's 24 centers, including Eastside, perform no "integral governmental functions" protected by *National League of Cities*, the decision below carves Alabama's entire community mental health system out of its overall "public health" system for FLSA purposes—with resultant loss of control by the state over employment policies and practices in its community mental health facilities. *Third*, the economic burden on the state

of the resultant unanticipated, unbudgeted and unfunded overtime liability will require curtailment or abandonment of important mental health programs, cut-backs in other state social services, or increased state taxes—all resulting from the undue intrusion of federal regulation into Alabama's sovereignty.

In short, the Eleventh Circuit has seized upon an isolated employee's claim for sleep-time pay at one mental health facility, and has converted it, without precedent and without warning, into a pervasive pronouncement applicable to all such facilities, thereby directly jeopardizing the entire state community mental health system—all in derogation of *National League of Cities*. For these reasons, the judgment below should be reversed by this Court.

ARGUMENT

I. THE DECISION BELOW WOULD ALLOW FEDERAL REGULATION TO MATERIALLY AND IMPROPERLY INTRUDE UPON ALABAMA'S SOVEREIGN DECISION-MAKING AUTHORITY.

In *National League of Cities* this Court emphatically reaffirmed the vitality of the Tenth Amendment as the bulwark against federal interference with the States' sovereign decision-making authority. In declaring the very FLSA minimum wage and overtime pay provisions involved herein unconstitutional as applied to state police and fire employees,[4] this Court held that:

> the dispositive factor is that Congress has attempted to exercise its Commerce Clause authority to pre-

[4] One principal issue in *National League of Cities* was the potential FLSA liability arising from the unconventional, often overnight shift schedules of state and local police and fire employees. In this respect, the instant case is strikingly similar, since it involves primarily FLSA sleep-time liability to overnight home managers.

> scribe minimum wage and maximum hours to be paid by the States in their capacities as sovereign governments. In doing so, Congress has sought to wield its power in a fashion which would impair the States' "ability to function effectively in a federal system. . . ." This exercise of congressional authority does not comport with the federal system of government embodied in the Constitution. *We hold that insofar as the challenged amendments operate to directly displace the States' freedom to structure integral operations in areas of traditional governmental functions, they are not within the authority granted Congress by Art. I, § 8, cl. 3.* [426 U.S. at 852; emphasis added; citation and footnote omitted.]

Here, FLSA regulation of Eastside and Alabama's other mental health centers would "directly displace the State['s] freedom to structure integral operations" regarding traditional and integral public health functions. Thus, *National League of Cities'* theme of the inviolability of state sovereignty was simply disregarded or rejected by the court below.

Because it interposed and utilized the rigid and inapposite two-pronged NLRB "political subdivision" subtest,[5] the Court of Appeals concluded that FLSA regulation of Eastside was not regulation of the "State *qua* State," one of three tests this Court, in recent decisions, has established for invalidating commerce legislation under *National League of Cities*. *See Federal Energy Regulatory Commission* v. *Mississippi*, ___ U.S. ___, 102 S. Ct. 2126, 2139 n. 28 (1982); *United Transportation Union* v. *Long Island Railroad Co.*, ___ U.S. ___, 102 S. Ct. 1349, 1353 (1982); *Hodel* v. *Virginia Surface Mining & Reclamation Association, Inc.*, 452 U.S. 264, 287-

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[5] For the many reasons why imposition of the NLRB "political subdivision" subtest herein is improper as a matter of law, *see* Reason for Granting the Writ I-A, pet. for cert. at 11-17.

88 (1981). By failing to go beyond this threshold "political subdivision" inquiry, the Court of Appeals (a) failed to recognize that, for FLSA and Tenth Amendment purposes, Eastside and its employees are no different from the State's other community mental health centers and employees; and (b) did not properly assess the unwarranted impact of its decision on Alabama's sovereign authority to make mental health policy and employment decisions.

A. Eastside And Its Employees Are, For Tenth Amendment Purposes, Indistinguishable From Other State Mental Health Centers And Employees.

As the court noted below, Alabama's long tradition of providing mental health services to its citizens dates from 1861. 669 F.2d at 673. Under 1967 legislation, Ala. Code §§ 22-51-1, *et seq.* (1975) ("Act 310"), the Department of Mental Health has steadily deinstitutionalized the State's mental health system, primarily to permit as many mentally-ill and retarded persons as possible to pursue relatively normal lives in community centers, separated from those seriously disturbed or violently mentally-ill persons for whom institutionalization cannot be avoided.[6] Since 1974, Eastside has played an integral role in this deinstitutionalization effort, providing a needed treatment environment for thousands of mentally-afflicted

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[6] The Alabama Department of Mental Health has stated in its *State Program* at 22 that:

> [t]he cornerstone of [the State's] philosophy regarding the planning and development of the mental health system is the tenet that *mental health care should be provided in the least restrictive and most humane setting* and in the shortest-term appropriate to the individuals' treatment needs . . . Community care is equal in importance to institutional care in providing [such] services . . . and is inextricable from system planning due to the interrelationship between community and institutional care. [Emphasis added.]

persons. Although Eastside is one of three centers incorporated under Alabama's general non-profit corporations statute, Sec. 10-3-1 (1975) ("Act 578"), its operations, employees, and employment practices do not differ from those in the State's other centers which are admittedly "public corporations" under Act 310.

The court below noted that Eastside was formerly an unincorporated service unit of the Jefferson Authority. 669 F.2d at 673. As such, mental health funds awarded by the Jefferson Authority to Eastside gave the impression of the Authority's awarding State funds to itself in competition with two other service agencies within its region. To dispel this impression of apparent "conflict of interest," the Authority incorporated Eastside as a separate entity. *Id.* at 673-74. But this could only be done under Act 578, because, for administrative reasons, the Department of Mental Health has adopted a policy of permitting incorporation of only one "Act 310 Board" per region,[7] and because the Jefferson Authority itself already constituted such an incorporated Board within its 3-county metropolitan region. 660 F.2d at 674 n.3; 509 F. Supp. at 581. Thus, the selection of Act 578 incorporation of Eastside was dictated solely by State administrative reasons and by the absence of any other incorporation mechanism, not by any wage and hour concerns.[8]

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[7] This long-standing policy was adopted in 1969 to permit proper assessment of regional needs, coordination of delivery of community mental health services, and channelling of public funds within each region by one state agency.

[8] Indeed, the State has long assumed that its community mental health facilities are immune from FLSA coverage under *National League of Cities*, based upon letters from the federal Wage and Hour Division confirming such immunity. *See* pet. for cert., App. at 56a, 57a.

Like all of Alabama's centers, Eastside is strictly regulated by the Department of Mental Health under its comprehensive *Community Mental Health Program Standards* (5th rev. ed. 1981). These *Standards* provide in part as follows:

> A community mental health center operates under the auspices of a public non-profit corporation as provided in Act 310 (1967 Alabama Legislature), a *private non-profit corporation* [like Eastside] as provided in Act 578 (1955 Alabama Legislature), or *any other public agency* created by or incorporated under Alabama law. [*Standards* at Sec. 1209; emphasis added.][9]

The *Standards* thus do not themselves distinguish between so-called "public" corporations formed under Act 310, and "private" corporations (including Eastside) formed under Act 578, treating both as "public agencies."

In all other significant respects, Eastside is functionally indistinguishable from the State's Act 310 centers. The administrative mechanism for funding all centers is the same. Budgetary, audit, accounting and other financial requirements are the same for all centers. The mix of programs they provide are dictated by State requirements and by regional needs, and Eastside's programs do not differ from those provided by many other centers. State review and oversight is the same for all centers, and the centers' reporting requirements are identical. Significantly, Eastside's employment policies and practices required by the State's *Standards* do not differ from those

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[9] The *Standards* in effect upon initiation of this litigation in the District Court, and included in briefs below, are reproduced in part in the pet. for cert., App. at 51a-55a. While a new revised edition of the *Standards*, cited here, was subsequently issued, no significant substantive changes relevant hereto have been made.

of other centers, particularly respecting the transitional home program in which respondent Williams was employed. *See Standards* at §§ 4101-4401; *State Program* at 17-19.

Indeed, analysis of the transitional home program's employees and employment practices demonstrates how the Eleventh Circuit's distinction between Eastside and other State centers, based upon the "political subdivision" subtest, leads to absurd results. For example, employees hired by Eastside during its prior "unincorporated" stage—when it was unquestionably part of a "public" entity (the Jefferson Authority)—performed the same jobs as those hired during Eastside's later "incorporated" stage. They were all subject to the same employment policies and procedures, including those regarding hours of work, shifts, sleep-time, and calculation of pay and benefits. Indeed, undoubtedly some Eastside employees worked during both the earlier "unincorporated" and later "incorporated" periods. Thus, under the Eleventh Circuit's "political subdivision" distinction, such carryover employees could be due back pay under FLSA for certain periods *after*, but not *before*, Eastside's Act 578 incorporation.

Further, many transitional home managers in "Act 310" centers perform jobs, and are subjected to employment policies and procedures, substantially identical to those applied to respondent Williams at Eastside. But under the Eleventh Circuit's "political subdivision" subtest, only Williams would be due statutory overtime for sleeping on Eastside's premises.

That the foregoing indistinguishable groups of mental health employees should be treated differently for FLSA purposes, merely because of Act 578 incorporation of Eastside, underscores the obvious unworkability of the

Eleventh Circuit's "political subdivision" subtest. The unwarranted and unjustified results of these employee comparisons demonstrate why, as *National League of Cities* and its progeny mandate, the courts must go beyond mere formalistic labels and assess the true impact of federal regulation on the states. Only thus can Tenth Amendment purposes be adequately served and state sovereignty thereby maintained.

B. FLSA Regulation Of Eastside Would Result In Unwarranted Federal Dictation Of Alabama's Mental Health Policy And Employment Decisions.

Notwithstanding the above, the court below concluded that Act 578 incorporation of Eastside removed it from presumptive FLSA immunity:

> For whatever reason, Alabama did not elect to operate Eastside as a state institution with state employees. . . . Whatever may have been the state's reason for doing it this way, it must live with the consequences. It cannot claim an immunity based on a condition which it itself sought to avoid. [669 F.2d at 678.]

But this conclusion is clearly erroneous. *First*, the court's use of the formalistic and superficial "state institution" and "state employees" labels obscures the reality that Eastside is an integral part of "the State" in all practical respects, and that its employees are indistinguishable from "state employees." *Second*, there is no evidence in the Record—and the court below referred to none—that Alabama "sought to avoid" any "condition" affecting Eastside's status as an integral part of the State mental health system. The reason for Act 578 incorporation of Eastside has been explained and, as noted, Alabama draws no distinction between assertedly "private" Act 578 and "public" Act 310 corporations.

Third, and most importantly, the court failed to recognize that the State's ability to determine the structure for delivering social services to its citizens, and to formulate employment policies and practices related thereto, is precisely the reason why Eastside *is* (rather than why it is not) entitled to Tenth Amendment protection herein. That fundamental choice is the very "freedom to structure integral operations in areas of traditional governmental functions" which *National League of Cities* sought to preserve. 426 U.S. at 852. As this Court has recently reiterated: " 'the authority to make . . . fundamental . . . decisions' is perhaps the quintessential attribute of sovereignty. Indeed, having the power to make decisions and set policy is what gives the State its sovereign nature." *Federal Energy Regulatory Commission* v. *Mississippi*, *supra*, 102 S. Ct. at 2138; citations omitted. Thus, the decision below, which fails to respect this "quintessential attribute of sovereignty," must be corrected.

II. THE DECISION BELOW, BY EFFECTIVELY DISTINGUISHING "MENTAL HEALTH" FROM "PUBLIC HEALTH," IMPROPERLY EXCISES A SIGNIFICANT PORTION OF ALABAMA'S SOVEREIGNTY

National League of Cities explicitly overruled *Maryland* v. *Wirtz*, 392 U.S. 183 (1968), which had upheld the constitutionality of application of the very FLSA minimum wage and overtime provisions involved herein to state educational and hospital employees:

> While there are obvious differences between the schools and *hospitals* involved in [*Maryland* v.] *Wirtz*, and the fire and police departments affected here, *each provides an integral portion of those governmental services which the States and their political subdivisions have traditionally afforded their citizens*. We are therefore persuaded that *Wirtz*

> must be overruled. [426 U.S. at 855; emphasis added.]

Further, *National League of Cities* declared that "*public health* . . . [is] typical of those [activities] performed by state and local governments in discharging their dual functions of administering the public law and furnishing public services." *Id.* at 851; emphasis added.

The Eleventh Circuit majority[10] simply disregarded all of this, and effectively distinguished, *sub silentio*, "mental health" from "public health" for Tenth Amendment purposes on the unprecedented, undocumented, unsupported and unjustifiable ground that mental health services are not "integral" because they do not "relate to the *entire state populace*" or "produce significant consequences affecting *all persons* in the state." 669 F.2d at 680; emphasis added. This conclusion literally carves out from the State's sovereignty the authority to establish employment policy in an entire field of operations, and subjects those operations to a significant, federally-imposed economic burden.

That this distinction cannot be legally justified is demonstrated in Eastside's petition for certiorari herein at pp. 17-21.[11] But from a purely *practical* standpoint, the distinction is even less tenable.

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[10] Circuit Judge Hill, concurring specially, did not join the majority opinion in this latter respect, indicating he was "presently inclined to the view that such [a mental health] operation [as Eastside] would be exempt." 669 F.2d at 680.

[11] The Court of Appeals cited no authority for its view other than *Webster's New International Dictionary* (1936 ed.). 669 F.2d at 680.

First, the State of Alabama makes no such distinction. The legislature has stated unequivocally in Ala. Code § 22-50-15 (1975) that:

> [a]ny state supported facility under the jurisdiction of the [State Mental Health] board [now Department] providing services requiring on-premises residence of patients, including [Eastside] . . . shall be considered *an essential function of the state*, and funds allocated for the support of said state supported facilities shall not be subject to proration at any time a deficit occurs in the general fund. [Emphasis added.]

And the Department of Mental Health has stated that:

> The continued development of alternative living conditions is critical in providing a continuum of care to the chronically mentally ill. . . . Certainly, residential facilities structured similarly to existing Title XX adult transitional homes and DMH group homes will be of *immediate highest priority* in assuring least restrictive treatment and an unhindered flow of care within the community/hospital continuum. [*State Program* at 56; emphasis added.]

Second, for minimum wage and overtime purposes, the State does not view "public health" employees in other facilities differently from employees in its mental health centers. Shift schedules, sleeping periods, calculation of pay and benefits, and all other terms and conditions of employment are determined for all such employees on the assumption that the detailed FLSA sleep-time and other wage and hour regulations do not apply to them.

Third, in 1972, Alabama's mental health system was described by then District Judge Johnson (later a member of the Court of Appeals majority below) in *Wyatt* v. *Stickney*, 344 F. Supp. 373 (M.D. Ala. 1972), *aff'd in part*

and rev'd in part on other grounds sub nom. Wyatt v. *Aderholt*, 503 F.2d 1305 (1974) as follows:

> The Court stresses . . . *the extreme importance and the grave immediacy of the need for proper funding of the State's public mental health facilities.* The responsibility for appropriate funding ultimately must fall, of course, upon the State Legislature and, to a lesser degree, upon the defendant Mental Health Board of Alabama. For the present time, the Court will defer to those bodies in hopes that they will proceed with the realization and understanding that *what is involved in this case is not representative of ordinary governmental functions such as paving roads or maintaining buildings.* Rather, what is so inextricably intertwined with how the Legislature and Mental Health Board respond to the revelations of this litigation is the very preservation of human life and dignity. Not only are the lives of the patients currently confined at Bryce and Searcy [State Hospitals] at stake, but also *at issue are the well-being and security of every citizen of Alabama. As is true in the case of any disease, no one is immune from the peril of mental illness.* [344 F. Supp. at 377-78; emphasis added.]

Thus the Eleventh Circuit's assertion below that Alabama's mental health system merely "addresses a specific problem affecting a limited class of persons within the state," 669 F.2d at 681, simply cannot be reconciled with the more accurate description of the system by Judge Johnson quoted above.

Moreover, Judge Johnson's description in *Wyatt* is fully consistent with passages in recent decisions of this Court arising from cases involving state mental health systems. *See, e.g., Pennhurst State School & Hospital* v. *Halderman*, 451 U.S. 1, 16 (1981) ("Because such legislation [as the Developmentally Disabled Assistance and Bill of Rights Act of 1975, 42 U.S.C. §§ 6000, *et seq.*] . . . *often intrudes on traditional state authority*, we should not

quickly attribute to Congress an unstated intent to act under its authority to enforce the Fourteenth Amendment" (emphasis added)); *Schweiker* v. *Wilson*, 450 U.S. 221, 236-37 (1981) ("[W]e . . . infer from Congress' deliberate action an intent to further the same subsidiary purpose that lies behind the Medicaid exclusion, which . . . was adopted because *Congress believed the States to have a 'traditional' responsibility to care for those institutionalized in public mental institutions*" (emphasis added; footnote omitted)); *O'Connor* v. *Donaldson*, 422 U.S. 563, 581-82 (1975) (Burger, C.J., concurring) (discussion of the evolving history and prominence of state mental health care).

Finally, regardless of the Eleventh Circuit's prefatory language on this "integral state operation" issue, and no matter how its treatment of that issue may be characterized, clearly the import of the decision below is that there is now in the Eleventh Circuit a distinction between "public health" services, which are protected by *National League of Cities*, and "mental health" services, which are not. As explained *infra*, at 16-19, this "distinction" carries with it devastating monetary and other permanent effects on Alabama's mental health system. Even viewed as *dicta*, the Eleventh Circuit's pronouncement constitutes a patently unprecedented, unauthorized and unconstitutional advisory opinion with potentially catastrophic effects upon state sovereignty. Review and reversal by this Court is warranted accordingly.

III. THE DECISION BELOW JEOPARDIZES ALABAMA'S MENTAL HEALTH PROGRAMS AND OTHER SOCIAL SERVICES

The State of Alabama has estimated that its potential exposure to FLSA minimum wage, sleep-time and other overtime liability arising from the decision below, calcu-

lated as of June of 1982, could approximate $700,000.[12] Such liability could be doubled under the FLSA's "liquidated" (double-damages) provision, 29 U.S.C. § 216(b). The resulting approximately $1.4 million liability would actually *exceed the State's $1.38 million budget for all transitional home programs* in its community mental health centers for the current fiscal year.

Thus, the ruling below could result in the forced payment of federal overtime rates to transitional home managers for their sleep-time in amounts requiring possible abandonment of the entire transitional home program. A federal requirement that wages must be paid for sleeping employees would thus deprive Alabama citizens of essential social services—a most unwarranted result which this Court should not permit. And, even if, on remand, the District Court ordered only *prospective* relief, payments to mental health employees at FLSA levels would greatly surpass amounts now budgeted or available therefor.

Under this crushing economic burden, few choices, all unpalatable, would be left to the State. It could attempt to raise taxes to increase revenues for mental health care, or seek increased federal assistance, which is in fact diminishing.[13] Absent increased revenues, the State must

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[12] This June, 1982 approximation excludes additional potential liability to the date of any subsequent judgment. Of course, the limitations of FLSA § 216 would also affect the State's ultimate liability.

[13] Eastside's (and the State's other centers') federal funding has been cut by approximately 25% for the new fiscal year beginning October 1, 1982. Henceforth, federal funds will come as "block grants" to Alabama, not as payments directly to Eastside. Thus, there is no guarantee that Eastside will receive any significant federal funds in the future. The Department of Mental Health has noted that "[t]he funding picture for social services at the federal level is bleak." *State Program* at 21. "Potential reductions of federal funds for all Title XX [community mental health] services under the pro-

either limit or terminate transitional home (or other mental health) programs; decrease the quality and quantity of mental health care generally offered; or shift funding from and thus reduce other social service programs.[14] Alternatively, the centers could decrease the number of mental health employees overall, or significantly alter present work schedules.[15]

The result is that increased federal regulation will dramatically and suddenly *dictate* the kind, quality and quantity of mental health and other social services pro-

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posed block-grant mechanism makes even maintenance of transitional homes uncertain." *Id.* at 52. "With reductions in federal funding and maintenance level state funding, CMHC's [Community Mental heath Centers] must increasingly look to local and *private* sources for program support." *Id.* at 77; emphasis added.

[14] Choices affecting the quality and quantity of mental health services are constrained by the continuing oversight and supervision of the United States District Court for the Middle District of Alabama in *Wyatt* v. *Stickney*, 344 F. Supp. 373 and 344 F. Supp. 387 (M.D. Ala. 1972), *aff'd. in part and rev'd in part sub nom. Wyatt* v. *Aderholt*, 503 F.2d 1305 (5th Cir. 1974). *See also Wyatt* v. *Ireland*, No. 3195-N (M.D.Ala. January 15, 1980) (unpublished order). Since that District Court has dictated in detailed fashion the standards of mental health care and treatment minimally acceptable under the federal Constitution, as well as the means to attain such levels, any alteration in the State system required by the ruling below would undoubtedly be subjected to close court scrutiny and possible further litigation.

[15] Any such changes would override the State's policy decisions regarding the number of employees necessary to provide adequate mental health services, and significantly decrease the benefits of the transitional home program. Specifically, the overnight shifts foster a stable environment while greatly enhancing the "homelike" atmosphere of Eastside and other centers. Forced abandonment of such policies to avoid FLSA liability would thus sacrifice perhaps the most beneficial feature of the State's deinstitutionalized mental health system.

vided by the State, and thereby seriously intrude upon the State's sovereignty. In *National League of Cities*, this Court stated in very similar circumstances that:

> [q]uite apart from the substantial costs imposed on the States and their political subdivisions, *the [FLSA] displaces state policies regarding the manner in which they will structure delivery of those governmental services which their citizens require.* The Act, speaking directly to the States *qua* States, requires that they shall pay all but an extremely limited minority of their employees the minimum wage rates currently chosen by Congress. It may well be that as a matter of economic policy it would be desirable that the States, just as private employers, comply with these minimum wage requirements. But *it cannot be gainsaid that the federal requirement directly supplants the considered policy choices of the States' elected officials and administrators as to how they wish to structure pay scales in state employment.* [426 U.S. at 847-48; emphasis added.]

The decision below thus would "force directly upon the States [the federal Government's] choices as to how essential decisions regarding the conduct of integral governmental functions are to be made." 426 U.S. at 855. *National League of Cities* concluded that "such assertions of power, if unchecked, would indeed . . . allow 'the National Government [to] devour the essentials of state sovereignty.' " *Id.*; citation omitted. This Court should not permit that result in this case.

CONCLUSION

For the reasons stated above, this Court should grant the petition for writ of certiorari.

Respectfully submitted,

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